IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Arbitration Case No.2 of 2005

Date of Decision: July 23, 2007

M/S Vikas & Associates **....Petitioner**

through Mr.S.K.Yadav , Advocate

v.

The Meghdoot Cooperative Group Housing Society Ltd. **....Respondent**

through Mr.Lokesh Sinhal, Advocate

CORAM: HON'BLE MR.JUSTICE VIJENDER JAIN, CHIEF JUSTICE

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1. Whether Reporters of Local Newspapers may be allowed to see the judgment?

2. To be referred to the Reporters or not?

3. Whether the judgment should be reported in the Digest?

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VIJENDER JAIN, CHIEF JUSTICE (ORAL)

This petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter to be referred as, `the Act') has been filed by the petitioner inter alia challenging that the disputes and differences have arisen in terms of the arbitration clause entered into between the parties. The petitioner has placed reliance on Clause 41 of the arbitration agreement which is to the following effect:-

"**41. ARBITRATION**

a) All questions & dispute relating to the meaning of specifications, designs, drawings and instructions and to the

quality of workmanship or materials used in the work or as to any other question, claim, right, matter or thing whatsoever in any way arising out of or relating to contract, specifications, instructions whether arising during the progress of work or after the completion or abandonment of work there of shall be referred to the sole Arbitrator within a period of 3 months from the payment of final dues by the Employee, of the person as mutually agreed by the Contractor/Employer.

b) Upon every and any such reference, the assessment of the costs incidental to the reference and award respectively shall be in the discretion of the arbitrator.

c) The venue of arbitration shall be the place where site in question is located.

Only the court within whose jurisdiction the project site is located will have jurisdiction on any, matter requiring reference to court."

It is the case of the petitioner that it had written to the respondent for payment of certain dues amounting to Rs.50,83,658/- plus interest but neither any payment nor any reply was received. Thereafter the petitioner sent a letter dated 15.7.2003, Annexure P-12, invoking Clause 41 of the arbitration agreement and requesting the respondent to give the consent of three names who may be acceptable to the petitioner so that by mutual consent an Arbitrator could be appointed. However, the respondent did not give any reply to the said letter and the petitioner was constrained to file a suit under Section 11 of the Act before the District Courts, Gurgaon. The said suit was filed on 27.8.2003. Notice thereof was served on the respondent but no reply was filed. Vide order dated 6.1.2004, in view of the scheme formulated by the High Court, the matter was transferred from the District Courts to this Court.

Thereafter notice was issued to the respondent by this Court. Respondent filed the reply.

The main thrust of the argument of learned counsel for the respondent is that as per the aforesaid arbitration clause, the arbitration could only be invoked within three months from the date of payment of final dues and as no final dues have been paid because the petitioner has abandoned the work, therefore, the arbitration clause cannot be invoked.

There is inherent fallacy in the argument of the respondent. The question of abandonment of work or whether final dues have been paid or not, has to be decided by the Arbitrator in terms of the arbitration clause. From a reading of the above arbitration clause, it is manifestly clear that all the disputes "as to any other question", is a question which has to be determined by the Arbitrator. Whether the petitioner has abandoned the work; whether the final dues in terms of the arbitration clause have been paid or not is a question which has to be decided by the Arbitrator. The respondent has not supplied the vacancy in terms of the arbitration agreement even after the receipt of notice of invocation of the said clause, therefore, the respondent has lost the right to supply the vacancy in terms of the arbitration agreement.

In view of the matter and with the consent of the parties, I appoint Justice N.C.Jain (retired Chief Justice, Gauhati High Court) as the sole Arbitrator to adjudicate upon all the disputes between the parties.

The Arbitrator shall fix his own fee.

The intimation of appointment shall be sent to the Arbitrator by the Registry forthwith .

Parties to appear before the Arbitrator on 25.8.2007 at 4.00 P.M.

Petition stands disposed of.

(VIJENDER JAIN)
CHIEF JUSTICE

July 23, 2007

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